

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MATTHEW CATANZARO,

Plaintiff,

Case Number 08-11173
Honorable Thomas L. Ludington

v.

MICHIGAN DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION, DENYING PLAINTIFF'S
CROSS-MOTION FOR SUMMARY JUDGMENT, GRANTING IN PART AND
DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT,
DISMISSING PLAINTIFF'S RETALIATION CLAIM WITH PREJUDICE AND
DIRECTING THE CLERK'S OFFICE TO UPDATE PLAINTIFF'S ADDRESS**

This matter is before the Court on a report and recommendation [Dkt #170] issued by Magistrate Judge R. Steven Whalen on February 10, 2011. Judge Whalen recommends denying Plaintiff's cross-motion for summary judgment [Dkt. #164] and granting in part and denying in part Defendants David Smith and Joseph Kleinhans motion for summary judgment [Dkt. #156].

More specifically, Judge Whalen recommends granting Defendant Smith's motion as to the retaliation claim in Count V and dismissing that claim with prejudice because a rational trier of fact could not find a causal relationship between Plaintiff's writing a grievance against another corrections officer and Smith making an audible statement about "the feds" wishing to speak with Plaintiff, which resulted in ridicule and physical assaults from other inmates. Judge Whalen further recommends denying Defendants motion for summary judgment as to the Eight Amendment claims against them because there remains unresolved issues of fact as to whether Defendant Kleinhans

intentionally and unjustifiably tried to hit Plaintiff in violation of the Eighth Amendment. As to Defendant Smith, Judge Whalen recommends that there is a factual disagreement as to whether Defendant Smith inferentially labeled Plaintiff a “snitch,” resulting in threats to Plaintiff’s health and safety in violation of the Eighth Amendment. Finally, Judge Whalen recommends denying Plaintiff’s motion for summary judgment because of the issues of fact remaining on his Eighth Amendment claims, and dismissal of his First Amendment retaliation claim under Defendants’ motion for summary judgment.

Service of Judge Whalen’s report and recommendation on Plaintiff was returned as undeliverable as Plaintiff’s address has changed [Dkt. #171]. It is, however, Plaintiff’s responsibility to promptly inform the Court of a change in address. *See E.D. Mich. L.R. 11.2.* As of today’s date, no party has filed any objections to the magistrate judge’s report and recommendation. A party’s decision not to object to the report and recommendation waives any further right to appeal. *Smith v. Detroit Fed’n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, a party’s decision not to object to the magistrate judge’s report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

Accordingly, it is **ORDERED** that the magistrate judge’s report and recommendation [Dkt #170] is **ADOPTED**.

It is further **ORDERED** that Plaintiff’s cross-motion for summary judgment [Dkt. #164] is **DENIED**.

It is further **ORDERED** that Defendants’ motion for summary judgment [Dkt. #156] is **GRANTED IN PART AND DENIED IN PART**.

It is further **ORDERED** that Plaintiff’s retaliation claim under the First Amendment to the

Constitution is **DISMISSED WITH PREJUDICE**.

It is further **ORDERED** that the Clerk of Court is **DIRECTED** to change Plaintiff's address to Charles Egeler Reception & Guidance Center, 3855 Cooper Street, Jackson, Michigan 49201-7547.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: February 28, 2011

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on February 28, 2011.

s/Tracy A. Jacobs
TRACY A. JACOBS